

**U.S. CUSTOMS SERVICE
OFFICE OF STRATEGIC TRADE
REGULATORY AUDIT DIVISION**

Recordkeeping Compliance Handbook

Recordkeeping Compliance Program

June 1998

FOREWORD

Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general recordkeeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509), sets forth procedures for the production of entry records and Customs examination of those records and penalties for failure to provide records upon Customs demand.

19 U.S.C. 1509(a)(1)(A) requires the production of records required by law or regulation for the entry of the merchandise. 19 U.S.C. 1509(e) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509 (a)(1)(A)). This list is commonly referred to as "the (a)(1)(A) list" and was published in the Customs Bulletin and Decisions, Vol. 30, No. 1, January 3, 1996 as Treasury Decision (T.D.) 96-1.

19 U.S.C. 1509(f) authorizes Customs to establish a recordkeeping compliance program. Parties required to maintain and produce records may participate in the program after meeting certain requirements. Participation in the program is voluntary.

This handbook has been written to assist importers in developing and maintaining a Customs recordkeeping compliance program for entry information and documents - the (a)(1)(A) records.

The recordkeeping requirements contained in this handbook apply to all persons and organizations required to keep Customs entry records. Although this handbook is specifically directed toward recordkeepers participating in a certified recordkeeping program, it can be used as a guideline by non-certified recordkeepers wishing to have systems that meet the recordkeeping requirements of Customs.

We believe that the handbook will prove to be of great value to the importing community, and we welcome suggestions from readers for any corrections, additions, or deletions to improve the quality of the handbook. Please forward any correspondence concerning the handbook to:

U.S. Customs Service
Regulatory Audit
1691 Phoenix Blvd., Suite 250A
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ATTENTION: Field Audit Specialist, Recordkeeping

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Recordkeeping Compliance Handbook

Recordkeeping Compliance Program

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PREFACE

The Customs Modernization Act introduced opportunities and a new environment for changing Customs operations. One expected change is the maintenance of Customs records under which Customs will no longer collect and file import-related documents. Instead, importers and their agents will maintain all Customs-related documents and information and thereby eliminate the need for duplicate recordkeeping by Customs. The Recordkeeping Compliance Program gives Customs and the importing community standardized concepts and principles to develop a reliable system to maintain and retrieve Customs information and documents and provide a foundation for these new concepts and responsibilities.

U.S. Customs Service Recordkeeping Compliance Handbook

Recordkeeping Compliance Program

Part 1. Introduction

1.1. **Purpose**

1.1.1. The passage of the Customs Modernization Act (Act) in 1993¹ ushered in an era of new partnership concepts between the importing community and the United States Customs Service. In light of these concepts, Congress expanded statutory recordkeeping requirements to more members of the importing community and created a recordkeeping compliance program.

1.1.2. This handbook describes the Customs Recordkeeping Compliance Program². It contains the basic instructions, guidelines, and other information necessary to apply and participate in the program.

1.2. **Background**

1.2.1 Importers have historically been responsible for maintaining records to support their import operations. Under former 19 U.S.C. 1508, importers and their agents were required to make, keep, and render for examination and inspection, records which pertain to Customs-related activities and are normally kept in the ordinary course of business. Under former 19 U.S.C. 1509, Customs could have examined and summoned these records.

1.2.2. The Act required Customs to identify and publish a list of the records (as defined in 19 C.F.R. 163.1(a)) that is required to be maintained and produced under subsection (a)(1)(A) of section 1509³. This list, referred to as “*the (a)(1)(A) list*,” has been published in the *Customs Bulletin and Decisions*, Vol. 30, No 1, January 3, 1996⁴.

1.2.3. The Act expanded section 1509 to provide administrative penalties for the failure to maintain and produce (a)(1)(A) records within a reasonable time when requested by Customs.

1.2.4. According to the Act, these penalties may be waived or reduced for participants in a voluntary recordkeeping compliance program. A party who is required to maintain and produce (a)(1)(A) records (recordkeeper) may be certified in the program after meeting general recordkeeping requirements and demonstrating the existence of certain procedures.

¹ The Customs Modernization Act is the popular name given to Title IV of Public Law 103-182, The North American Free Trade Agreement Implementation Act (107 Stat. 2057), dated December 8, 1993.

² See 19 U.S.C. 1509(f).

³ See 19 U.S.C. 1509(e).

⁴ The January 3 (a)(1)(A) list is an interim list because the Customs Service is re-engineering its entry and related processes and the list is expected to change as entry requirements are revised.

1.3. Organizational Responsibilities

The Commissioner of Customs has delegated responsibility for the Customs Recordkeeping Compliance Program to the Director, Regulatory Audit Division (Director). The Director has further delegated program management responsibilities to Field Directors, Regulatory Audit. The Director has designated a field audit specialist to manage the program.

Other Customs personnel continue to have authority to request records from recordkeepers as part of their functional responsibilities. Other Customs personnel will coordinate program issues with the Regulatory Audit Division.

Part 2. Customs Recordkeeping Requirements

2.1 Introduction

2.1.1. This section covers the legal requirements for preparing, maintaining, and producing records discussed in this handbook. It also covers the authority under which Customs may examine records.

2.1.2. These overall requirements apply to **all** importers and persons required to maintain and produce records for the entry of merchandise, whether or not they are participants in a recordkeeping compliance program.

2.2 Authority for Recordkeeping Requirements

2.2.1. 19 U.S.C. 1508(a) Requirements. “Any- (1) owner, importer, consignee, importer of record, entry filer, or other party who- (A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or, (B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States; (2) agent of any party described in paragraph (1); or (3) person whose activities require the filing of a declaration or entry, or both; shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which- (A) pertain to any such activity, or to the information contained in the records required by this Act in connection with any such activity; and (B) are normally kept in the ordinary course of business.”

2.2.2. Additional authority for recordkeeping requirements is contained in 19 U.S.C. 1509 and 19 C.F.R. 163.

2.3. Records to be Maintained

2.3.1 General Definition

a. Title 19 U.S.C. 1508 defines records to include, but not be limited to, statements, declarations, documents and electronically generated or machine readable data which pertain to importations, drawback claims, the transportation or storage of merchandise carried or held under bond, or the filing of a declaration or entry, and are normally kept in the ordinary course of business.

b. The Customs Regulations (19 C.F.R.), section 163, further defines records as any information made or kept in the ordinary course of business which pertain directly or indirectly to the activities listed in 19 C.F.R. 163.1(a)(2). Those activities are: (i) any importation, declaration or entry; (ii) the transportation or storage of merchandise carried or held under bond into or from the Customs territory of the United States; (iii) the filing of a drawback claim; (iv) any exportation to a NAFTA country; (v) the collection or payment of fees and taxes to Customs; or (vi) any other activity required to be undertaken pursuant to the laws or regulations administered by the Customs Service. Examples of information which are considered records include but are not limited to: statements, declarations, documents or electronically generated or machine readable data, books, papers, correspondence, accounts, financial accounting data, technical data, computer programs necessary to retrieve information in a usable form, and entry records (contained on the “(a)(1)(A)” list). The records shall be sufficiently detailed to:

- establish the right to make entry,
- establish the correctness of the entry;
- determine the liability for duties, fees and taxes;
- determine the liability for fines, penalties, and forfeitures; and,
- determine compliance with Customs laws and regulations.

2.3.2. Other Records

In addition to the (a)(1)(A) records, the parties must also maintain and produce documents and information which are normally kept in the ordinary course of business and substantiate the accuracy of the information provided to Customs¹ (E.g., financial accounting records to support the price actually paid or payable, inventory records to verify the quantity of imported merchandise received, etc.).

2.4. Record Retention Period

19 U.S.C. 1508(c) dictates that “records required by subsection (a) and (b) shall be kept for such periods of time as the Secretary shall prescribe; except that-(1) no period of time for the retention of the records required under subsection (a) or (b)(3) may exceed 5 years from date of entry, filing of a reconciliation, or exportation, as appropriate; (2) the period of time for the retention of the records required under subsection (b)(2) shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and (3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.”

2.5. Customs Authority to Examine Records

The examination of records by Customs is authorized by 19 U.S.C. 1509. This gives Customs the authority to examine records to insure compliance with the laws and regulations which it administers.

2.6 Time Requirement for Producing Records

Upon written, oral, or electronic notice, Customs may require the production of entry records by any person listed in 19 C.F.R. 163.2(a) who is required under this part to maintain such records, even if the entry records were required at the time of entry. Any oral demand for entry records shall be followed by a written or electronic demand. The entry records shall be produced within 30 calendar days of receipt of the demand. Should any person from whom Customs has demanded entry records foresee the inability to comply timely with the demand, such person shall so notify Customs in writing without

¹ See 19 U.S.C. 1508(a).

delay and before expiration of the 30-day period prescribed herein for production of the entry records; the written notice to Customs shall provide an explanation for the inability to comply timely with the demand and shall advise Customs of the date on which the records will be produced.

2.7. Failure to Produce Records

19 U.S.C. 1509(g) provides penalties for failure to comply with a lawful demand for records included in the (a)(1)(A) list.

2.8. Penalties for Failure to Comply with Customs Demand for Entry Records

2.8.1. Non-Certified Recordkeepers

a. Non-certified recordkeepers are all parties required to make, keep, and render records who are not a participant in the program.

b. If the record Customs wishes to have produced is required by law or regulation for the entry of merchandise the following penalties may be imposed:

- For willful failure of the person to maintain, store, or retrieve the demanded record, such penalty for each release shall not exceed the lesser of \$100,000 or 75% of the appraised value of the merchandise;
- For negligence of the person to maintain, store, or retrieve the demanded record, such penalty for each release shall not exceed the lesser of \$10,000 or 40% of the appraised value of the merchandise.

c. In addition to penalties, if the demanded record relates to the eligibility of merchandise for a column 1 special rate of duty and the entry is unliquidated, Customs shall liquidate the entry at the column 1 general rate of duty. If the entry has been liquidated within two years preceding the demand, the entry shall be reliquidated notwithstanding the time limitation in 19 U.S.C. 1514 or 1520, at the column 1 general rate of duty. However, any liquidation shall be at the column 2 rate of duty if Customs demonstrates that such duty rate is appropriate for the merchandise.

2.8.2. Certified Recordkeepers

a. Certified recordkeepers are those parties who participate and are approved in the program.

b. Certified recordkeepers who are generally in compliance with the appropriate procedures and requirements of the program and who fail to maintain, store, or produce the demanded records shall, in the absence of willfulness or repeated violations, receive a written notice of violation in lieu of a penalty.

c. Willful failure to produce or repeated violations of the recordkeeping requirements with no attempt to correct deficiencies and/or failure to exercise reasonable care in the maintenance of records may cause a certified recordkeeper to be removed from the program and may subject the recordkeeper to immediate penalty action for failing to produce records.

2.9. **Avoidance of Penalty**

No penalty may be assessed if the person who fails to comply with a lawful demand for entry records can show:

- The loss of the demanded information was the result of an act of God or other natural cause or disaster beyond the fault of such party or their agent;
- Demanded information was substantially complied with by furnishing other evidence satisfactory to Customs;
- Demanded information was presented to and retained by Customs at time of entry or submitted in response to an earlier demand.

Part 3. **Program Description and Requirements**

3.1. **Introduction**

The Program is a voluntary program under which certified recordkeepers are eligible for alternatives to penalties and may be entitled to greater mitigation of any recordkeeping penalty that might be assessed should they be unable to produce a requested record. The program was established by the Act¹.

3.2. **Participants**

Any party required to maintain, store, or retrieve entry records [(a)(1)(A) list] may participant in the program. Part 2.2.1. of this handbook lists those parties identified in 19 U.S.C. 1508(a).

3.3. **Recordkeeping System**

3.3.1. The program covers recordkeeping systems used to maintain, store, or retrieve (a)(1)(A) list records.

3.3.2. The recordkeeper will describe the system used for maintaining, storing, and retrieving entry records and identify the storage location(s) for the records.

3.3.3. The recordkeeper will identify the name of the company officer responsible and the location of the *accounting and financial records* supporting the entry information.

3.3.4. Recordkeepers with multiple importing divisions may apply for program certification for individual divisions if (1) the recordkeeping system for the designated division is inclusive and (2) it can provide all other information necessary to support the Customs-related operations of the designated division.

¹ 19 U.S.C. 1509(f).

3.4. Requirements

In order to be certified, a recordkeeper is required to demonstrate that he:

- complies with the requirements in this handbook;
- understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;
- has in place written procedures to explain recordkeeping requirements to those employees who are involved in the preparation, maintenance and production of required records;
- has in place written procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service (see Part 3.10. of this handbook);
- has designated a dependable individual or individuals to be responsible for the recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;
- has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records of recordkeeping formats other than original records; and
- has written procedures for notifying the Customs Service of occurrences of variances to, and violations of the requirements of the program or negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding the program.

3.4.2 Knowledge of legal requirements

The recordkeeper must have a knowledge and understanding of the requirements for the maintenance and production of records as required by Customs laws (19 U.S.C. 1508 and 19 U.S.C. 1509). This can be shown by maintaining a current written recordkeeping procedures manual and periodic internal/external reviews to insure that recordkeeping policies and procedures are being followed.

3.4.3. Employee knowledge of procedures

The recordkeeper will demonstrate the availability of procedures that explain the Customs recordkeeping program to employees who are involved in the preparation, maintenance, and production of required records. This can be accomplished with orientation programs for new employees responsible for the program and internal management reviews.

3.4.4 Designated individual

The recordkeeper will designate a dependable and responsible employee for recordkeeping. This individual(s) must be in a position of responsibility for all Customs recordkeeping functions, remain current on Customs' recordkeeping requirements and train newly designated employees on Customs recordkeeping requirements and procedures.

3.4.5. Maintenance of original documents or information

The recordkeeper shall maintain all required records in the original format unless that person incorporates written notification of such alternative storage methods to the Director of the Miami Regulatory Audit field office with their program application.

3.4.6. Identification, reporting and correction of violations

The recordkeeper must have written procedures for notifying the Customs Service of occurrences of variances to, and violations of the requirements of the program and for taking corrective action when notified by the Customs Service of violations or problems regarding the program. These written procedures should also cover the corrective action taken, explaining what happened, why it happened and what was done to correct the problem. Any variance or violation must be reported to the Director of the Miami Regulatory Audit field office.

3.4.7. Certified recordkeeping systems will be maintained in English and in the United States. The designated individual(s) must also be located in the United States.

3.4.8. Bond Requirement

Recordkeepers wishing to participate in the program must have a bond in effect.

3.5. Certification Agreement

The recordkeeper will submit an application requesting certification. The application will provide a complete and detailed description of the recordkeeping system. Upon Customs acceptance of the recordkeeper's application, Customs will enter into an agreement with the recordkeeper for the maintenance of records in accordance with the application and system description.

3.6. Certification Agreement Period

The certification agreement will remain in effect until terminated in writing by either the recordkeeper or Customs.

3.7. Electronic Filing Procedures

Customs will only accept program applications and biennial statements on a 1.44 MB (3½") computer diskette in Microsoft Word with an accompanying hard copy (paper copy). Application forms can be obtained from the Customs Electronic Bulletin Board. Applications which do not follow these standards will be rejected and returned to the applicants.

3.8. Public Access Electronic Bulletin Board

Current information about the program is available on the public access Customs Electronic Bulletin Board. The Recordkeeping Compliance Handbook is contained in a compressed file named: RCPH698.EXE. This file may be transferred (downloaded) from the bulletin board to local computers through regular electronic communication procedures. After downloading, this file can be uncompressed at the DOS prompt by typing the file name. The application form is contained in a file named: APPLFORM.DOC. These files are located in the Customs Bulletin Board File Area #15: Customs Extra!. The Customs Bulletin Board may be accessed by telephone at 703-921-6155 using the following computer settings:

Terminal:	ANSI	Databits:	8
Stopbits:	1	Parity:	None

Telephone assistance for the Customs Electronic Bulletin Board is available at 703-921-6236.

3.9. Systems Capability

3.9.1. The recordkeeping system will be capable of providing all information required to support the entry of merchandise into the Customs territory of the United States.

3.9.2. The system will be maintained using either manual or automated techniques, or combinations of each.

3.9.3. The system will retain documents or electronic information in their original format unless the recordkeeper has met the provisions of 19 C.F.R. 163.5.

3.9.4. The system will have the capability to retrieve data and will have sufficient back up procedures.

3.10. Procedures Manual

3.10.1. The recordkeeper will maintain a written procedures manual describing the Customs recordkeeping system. The manual will be a compilation of policy, procedures, and instructions, which will guide and direct personnel in the preparation and retention of Customs required records.

3.10.2. The manual will be available in an English language version.

3.10.3. The manual is **not** to be submitted to Customs for review, approval, or certification but will be available and provided to Customs upon reasonable request.

3.11. Alternative Recordkeeping Storage Systems

3.11.1. Alternative recordkeeping storage systems maintain entry records in non-original formats.

3.11.2. Recordkeeping descriptions will identify and explain alternative storage procedures included in the recordkeeping system submitted for certification in accordance with part 3.4.5. of this handbook.

3.12. Safeguards

3.12.1. The recordkeeping system will contain procedures and controls to ensure the integrity of the documents and information.

3.12.2. Storage programs will protect documents and information from loss and assure that the documents and information are readable.

Part 4. Application Processing and Certification

4.1. Application

Recordkeepers will submit an application form obtained from the Customs Electronic Bulletin Board (see Appendix A) requesting participation in the program and submitting their recordkeeping system for certification.

4.2. Customs Office to Receive Program Submissions

4.2.1. All applications will be filed at: Recordkeeping Processing, U.S. Customs Service, Regulatory Audit-Miami Branch, 909 S.E. First Avenue, Suite 710, Miami, FL 33131.

4.2.2. An administrative review will be performed by the Program Administrator in Miami, Florida to assure the requirements of paragraph 3.7 of this handbook are met. Upon successful completion of the administrative review the application will be referred for technical review.

4.2.3. In cases of multiple recordkeeping locations, technical review may be assigned to the Director of the Regulatory Audit field office responsible for the geographical area where the applicant's designated recordkeeping officer is located.

4.2.4. The Director may assign technical review and certification responsibilities to alternate or multiple directors of Regulatory Audit field offices, regardless of geographical location, when necessary to meet the Customs workload and internal management needs.

4.3. Customs Application Processing

4.3.1. The Program Administrator will review the application and determine whether additional information is needed. Customs will notify the applicant if additional information is needed.

4.3.2. Upon receipt of the request, the Director of the Miami Regulatory Audit field office will determine whether the applicant is eligible for the program and whether the recordkeeping system complies with program requirements.

4.3.3. The Director of the Miami Regulatory Audit field office will determine whether review and verification at the recordkeeper facilities is necessary and will coordinate the review with the Field Audit Specialist-Recordkeeping, the recordkeeper, and other Customs offices if an on-site verification is to be carried out.

4.3.4. Customs approval of the application will generally be given to applicants that submit complete applications which adequately portray the recordkeeping system and comply with statutory and regulatory requirements.

4.3.5. The Director of the Miami Regulatory Audit field office will take into account the size and nature of the recordkeeper's importing business and the volume of imports when determining the recordkeeper's suitability for program participation.

4.3.6. The Director of the Miami Regulatory Audit field office will maintain a permanent file containing the application with attachments, application processing documents, and information concerning the disposition of the application, and subsequent program activities.

4.4. Processing Time

4.4.1. The Director of the Miami Regulatory Audit field office will complete the technical processing of applications within 120 days after receipt in the field office. The time allowance will be suspended for incomplete applications, incorrect electronic submissions, unavailable processing resources, applicants' delays in responding to requests for additional information, or limitations imposed on on-site reviews.

4.4.2. If applications cannot be processed within the standard time period the Director of the Miami Regulatory Audit field office will notify the applicant and identify the expected completion date.

4.5. Customs Certification and Agreement

4.5.1 Upon approval of a recordkeeper's application, the Director of the Miami Regulatory Audit field office will enter into a certification agreement with the applicant. The agreement will constitute certification of the applicant's recordkeeping system (Appendix C).

4.5.2. The agreement will be signed by the applicant's corporate officer responsible for the organization's overall Customs operations.

4.5.3. The certification will be dependent upon the reliability and accuracy of the information contained in the recordkeeper's application. Subsequent determinations that the application and supporting documents contain inaccurate statements will invalidate the certification.

4.6. Application Denial

4.6.1. If the Director of the Miami Regulatory Audit field office determines that an application submitted under 19 C.F.R. 163.12 should not be approved and that certification for participation in the program should not be granted, the Director of the Miami Regulatory Audit field office shall issue a written notice of denial to the applicant. The notice of denial shall set forth the reasons for the denial and shall advise the applicant of its right to file an appeal.

4.6.2. If the deficiency is corrected within 90 days, the applicant may request the Director of the Miami Regulatory Audit field office to reinstate the application.

4.6.3. Applicants may appeal application denials with the Director according to the procedures contained in Part 6.

Part 5. Procedures after Certification

5.1. System Changes

5.1.1. After certification, a recordkeeper will advise the Director of the Miami Regulatory Audit field office when significant changes have occurred in system procedures and the system description report no longer accurately describes the recordkeeping system.

5.1.2. "Significant" changes will include, inter alia, the following situations:

- a. Changes to procedures which **limit or reduce** the conditions or scope of:

- i. Statements demonstrating compliance with the program's statutory requirements stated in part four; or,
 - ii. Statements contained in the certification agreement.
 - b. Changes in the storage location of the records by the recordkeeper.
 - c. Changes in the name or phone number of the person responsible for the recordkeeping compliance program.
 - d. Changes in records retrieval procedures by the recordkeeper.
 - e. Other changes considered significant by the recordkeeper.
- 5.1.3. The notice of significant changes will be submitted to the Director of the Miami Regulatory Audit field office within 30 days of their implementation.
- 5.1.4. Customs' acceptance of system changes will not relieve the recordkeeper from the requirement to produce documents and information recorded prior to the system changes.
- 5.1.5. A recordkeeper's certification may be revoked for failure to report significant system changes.

5.2. Biennial System Review

The certified recordkeeper will conduct a biennial review of the recordkeeping system to verify that it continues to conform to program requirements and standards, that all changes have been reported to Customs, that the previously provided recordkeeping description continues to be accurate, and that the procedures manual is current and accurate.

5.3. Recordkeeper's Biennial Statement

- 5.3.1. Every two years, on the anniversary of the certification agreement, the recordkeeper will provide the Director of the Miami Regulatory Audit field office with the information requested in Appendix D.
- 5.3.2. The biennial statement will also identify system changes that have not previously been reported to Customs but are considered necessary by the recordkeeper to maintain the accuracy and reliability of the system description.
- 5.3.3. Recordkeepers will submit the statement within 30 days of the anniversary date of the certification.
- 5.3.4. The statement will be filed in accordance with the provisions set forth in paragraph 3.7 of this handbook.
- 5.3.5. Unless otherwise advised by Customs, the recordkeeper's program certification will be continued for the following two years upon receipt of the recordkeeper's biennial statement.
- 5.3.6. The Director of the Miami Regulatory Audit field office may revoke a recordkeeper's certification for failure to submit the biennial statement.

5.4. Responsibilities

Recordkeepers are responsible for guaranteeing that the records included in the certification are maintained in accordance with Customs requirements and standards.

5.5. Recertification

5.5.1. When a certified system has changed to such an extent that the system description is no longer valid, a recordkeeper must apply for recertification to remain in the program.

5.5.2. Some changes which will cause a need for recertification include:

- System conversion from manual to automated procedures;
- Transfer of recordkeeping functions from one party to another; and,
- Major organizational changes such as transfer of functions, succession, merger, stock swaps, reorganizations, and buy outs.

5.5.3. The recordkeeper will submit a new application for program participation containing all requirements described in this handbook and the appendices. This procedure will not prejudice the previous certification.

5.5.4. Customs will process applications for recertification in the same manner as new applications and will give appropriate consideration for the applicant's prior history as a program participant.

5.6. Reporting Violations to Customs

When a recordkeeper discovers variation or violation of the recordkeeping compliance program or of Customs laws and regulations governing recordkeeping, the designated recordkeeper will report the violations or discrepancies to the Director of the Miami Regulatory Audit field office in writing within 30 days of discovery.

5.6.1. The written notification will explain the extent of the violation or discrepancy, why it occurred, and what has been done to correct the situation.

5.7. Violations of Program and Recordkeeping Requirements

When Customs discovers a certified recordkeeper to be in violation of the Customs statutory and regulatory recordkeeping requirements, or the requirements of the recordkeeping compliance program, the following guidelines will be followed in lieu of immediate penalty action or program revocation.

5.7.1 First Time Violations

- a. Violations will be reported to the Director of the Miami Regulatory Audit field office.
- b. The Director of the Miami Regulatory Audit field office (or delegate) will discuss with the recordkeeper the cause of the violation and the action to be taken to correct the violation.

c. On the completion of the corrective action, the recordkeeper will advise the Director of the Miami Regulatory Audit field office.

5.7.2 Subsequent Violations

a. The Director of the Miami Regulatory Audit field office will conduct a review of subsequent violations and may issue a formal notice requesting the recordkeeper to show cause, within 30 days, why the certification should not be revoked.

b. The Director of the Miami Regulatory Audit field office will advise the recordkeeper of his/her decision regarding certification within 30 days after the close of the time period allowed for the recordkeeper's response.

Part 6. Revocation and Appeal Procedures

6.1 Introduction

Certified recordkeepers' participation in a Customs Recordkeeping Compliance Program may be revoked for the reasons cited below. Any revocation may be appealed to the Director, Regulatory Audit Division.

6.2. Certification Revocation

The Director of the Miami Regulatory Audit field office may revoke the program certification of a certified recordkeeper after appropriate notice for the following reasons:

- (i) The certification privilege was obtained through fraud or mistake of fact;
- (ii) The program participant no longer has a valid bond;
- (iii) The program participant fails on a recurring basis to provide entry records when demanded by Customs;
- (iv) The program participant willfully refused to produce a demanded or requested record;
- (v) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in § 163.12(b)(3); or
- (vi) The program participant is convicted of any felony or has committed acts which constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

The revocation shall be effective on the date of issuance and shall remain in effect pending any appeal. Revocation may subject the parties to penalties pursuant to 19 C.F.R. 163.6.

6.3. Procedures for Revocation

The Director of the Miami Regulatory Audit field office may for due cause serve notice in writing to a certified recordkeeper revoking certification. Such notice shall advise the recordkeeper of

the grounds for the action and shall inform the recordkeeper of the procedures which should be followed should the recordkeeper wish to appeal the revocation.

6.4. Appeal of Revocation

A recordkeeper who has received a notice of revocation from certification in the recordkeeping compliance program from the Director of the Miami Regulatory Audit field office may appeal the decision to the Director, Regulatory Audit Division, Room 6.3A, U.S. Customs Service, 1300 Pennsylvania Ave. N.W., Washington, D.C. 20229. The appeal must be filed within 30 days from the date of the notice of the revocation. The Director, Regulatory Audit Division shall consider the merits of the appeal submitted by the recordkeeper and shall render his decision, in writing, within 30 days of receipt of the appeal.

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Appendix A

Application for Program Participation

Contents and Attachments

Application for Program Participation

Contents and Attachments

The application for acceptance into the Customs Recordkeeping Compliance Program will contain the following information, statements, and attachments as shown below. If there are multiple recordkeeping systems or locations, a separate application with attachments must be prepared for each.

1. Applicant name, address, telephone number and fax number
2. Applicant's primary Customs importer identification number
Multiple numbers must be listed and their usage explained in the system description attachment.
3. Identification of the recordkeeping system (type of records such as accounting records or Customs records, or records pertaining to one division but maintained in different geographical locations) to be included in the compliance program and their geographical locations.
4. Name of designated recordkeeping compliance officer, title, address, telephone number and fax number

Attachments

1. **All applications:**
 - 1.1 System description (see Appendix B)
 - 1.2. Certification agreement (see Appendix C)

CERTIFIED RECORDKEEPER APPLICATION

Primary Importer ID or IRS Number:

Company Name Line 1:

Company Name Line 2:

Address Line 1:

Address Line 2:

City:

State (2-letter code):

Zip Code:

Telephone Number:

Fax Number:

Type of Records (Identification of record keeping systems):

Records Location Address Line 1:

Records Location Address Line 2:

Records Location City:

Records Location State (2-letter code):

Records Location Zip Code:

Contact Person Name:

Contact Person Title:

Contact Person Phone Number:

Contact Person Fax Number:

Contact Person Electronic Mail Address:

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Appendix B

Recordkeeping System Description

Recordkeeping System Description

Required Information

1. Recordkeeper Information

- 1.1. Applicant Name
- 1.2. Identification of the recordkeeping system by name or other descriptive title

2. Description of Customs importing business operations

- 2.1. Organization structure
- 2.2. Identification of the organizational element(s) included in the recordkeeping system
- 2.3. Business operations associated with the import operations and products

3. A description of Customs-related operations

- 3.1. The recordkeeper will explain the Customs identification numbers and suffixes (importer ID number) applicable to the Customs-related business associated with the program.
- 3.2. Description of Customs-related operations including:
 - major products/commodities imported by quantity and value;
 - sources of imported products (country and manufacturer identification);
 - type of bond coverage;
 - participation in special Customs programs such as:
 - Importations under the Generalized System of Preferences (GSP),
 - Importations under the Caribbean Basin Initiative (CBI),
 - Importations or exportation under the North American Free Trade Agreement (NAFTA),
 - Drawback,
 - Importations under 9801 or 9802,
 - Temporary importations under bond,
 - Bonded warehouse activities either in public or private warehouses,
 - Foreign trade zone operations, and
 - Other programs, as appropriate.
- 3.3. Other Customs compliance programs in which the applicant is an approved participant or has a pending application.

4. Recordkeeping System

- 4.1. A description of the recordkeeping system such as electronic or paper retention, alternate storage methods if applicable, and any other information which provides an understanding of operating procedures and associated internal controls.
- 4.2. The recordkeeper will provide a specific list of (a)(1)(A) records that will be maintained for each type of entry. If some of the records are to be maintained by an agent, the list will identify which party will maintain each record.
- 4.3. If entry records are maintained at multiple locations, identify the documents and information to be maintained at each location. Include the name, address, and telephone number of a contact person for each location.
- 4.4. Provide the location of the accounting and financial records which support, reflect, or relate to importation, exportation, or other Customs activities. This includes but is not limited to, accounting documents, books, financial statements and similar records. The information to be included in the recordkeeping system includes the following:
 - i. The name of the person responsible for the records;
 - ii. The location of the records;
 - iii. A brief description of the records such as: purchase documentation, receiving records disbursement and payment accounts, financial statements.
 - iv. Type of recordkeeper (e.g., importer of record, consignee, broker, drawback filer, etc.)
- 4.5. Audit trail linking accounting and financial records to Customs entry submissions
- 4.6. Storage medium
- 4.7. Description of alternative storage procedures (maintenance of information in other than original formats), if applicable
- 4.8. Explanation of retrieval procedures
- 4.9. Internal and management controls concerning required recordkeeping practices
- 4.10. A statement that the recordkeeper understands the legal requirements of recordkeeping, including the nature of the records required to be maintained and produced and the time period involved.
- 4.11. A statement that the recordkeeper has written procedures in place to explain recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production or required records.
- 4.12. A statement that the recordkeeper has written procedures in place regarding the preparation and maintenance of required records, and the production of such records to the Customs Service.
- 4.13. A statement that the recordkeeper has designated a dependable individual(s) to be responsible for recordkeeping compliance and whose duties include maintaining familiarity with the recordkeeping requirements of Customs.

- 4.14. A statement that the recordkeeper has written procedures for notifying the Customs Service of occurrences of variances to, and violations of the requirements of the program or negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems.
- 4.15. A statement that the recordkeeper shall maintain an active bond.
- 4.16. A statement that the recordkeeping systems will be maintained in the English language and that the designated individual(s) and the records will be located in the United States.
- 4.17. A statement that the recordkeeper will advise the Director of the Miami Regulatory Audit field office in writing of significant changes to the recordkeeping system.
- 4.18. Other appropriate information unique to the system under review

5. Administrative Review Checklist

- 5.1. All applications will be evaluated by the following administrative review.
- 5.2. Applications failing the administrative review will be returned to the applicant.
- 5.3. Applicants are encouraged to evaluate applications prior to submission to aid in the approval process.

U. S. CUSTOMS SERVICE

**Office of Strategic Trade
Regulatory Audit Division
Recordkeeping Compliance Program
Administrative Review Checklist**

Company Name: _____

Company Address: _____

The following questions are to be answered for the administrative review of all Recordkeeping Compliance Program applications by checking the appropriate response box. One negative response will require the application to be returned to the company to correct application deficiencies. If all responses are affirmative, the application will receive a technical review.

Yes No

" "

1. Is this application from a company that is a party listed in 19 U.S.C. 1508(a) and 19 C.F.R. 163.2(a)? Does the company identify which (e.g., importer of record, consignee, broker, drawback filer, etc.)? If yes, continue to question #2. If no, return the application to the company explaining why they are ineligible to participate in the recordkeeping compliance program.

" "

2. Is the application form included in the submission and is it filled out? If yes, continue to question #3. If no, return the application to the company explaining the application requirements of the recordkeeping compliance program and request completion of the application form.

" "

3. Is the application form or the certification agreement submitted on computer diskette (3½", 1.44MB) and is the application in Microsoft Word with an accompanying hard copy? If yes, go to the technical review. If no, return application to the company explaining the application requirements of the recordkeeping compliance program.

6. Technical Review Checklist

6.1. All applications will be measured by the following technical review.

6.2. Applicants submitting applications which contain technical review deficiencies will be notified in writing and provided 90 days to correct those deficiencies. Applications which are not corrected within the 90 day period will be considered abandoned.

6.3. Applications are encouraged to perform their own technical review and evaluate applications prior to submission to aid the approval process.

U. S. CUSTOMS SERVICE

**Office of Strategic Trade
Regulatory Audit Division
Recordkeeping Compliance Program
Technical Review**

Company Name: _____

Company Address: _____

The following questionnaire is for the technical review of all Recordkeeping Compliance Program applications. The questions are answered by checking the appropriate response box. A comment section is provided.

Yes No

" "

1. Did the recordkeeper describe the recordkeeping system by name or other descriptive title that is used for maintaining, storing, and retrieving entry records? If no, describe the deficiency in the comment section and proceed to the next question.

Comments: _____

2. Does the application include a description of Customs importing business operations, such as:

" "

- a. Organization structure?

" "

- b. Identification of the organizational element(s) included in the recordkeeping system?

" "

- c. Business operations associated with the import operations and products?

If no, describe the deficiency in the comment section and proceed to the next question.

Comments: _____

Yes No

" "

3. Does the recordkeeper list all of the Customs identification numbers and suffixes (importer ID number) applicable to the Custom-related business associated with the program? If no, describe the deficiency in the comment section and proceed to the next question.

Comments: _____

" "

4. Does the application of the recordkeeper include a description of the Customs-related operations such as: major products/commodities imported by quantity and value, sources of imported products, type of bond coverage, participation in special trade programs (GSP, CBI, NAFTA, drawback, 9801, 9802, TIB, FTZ, bonded warehouse)? If no, describe the deficiency in the comment section and proceed to the next question.

Comments: _____

" "

5. Does the application of the recordkeeper cover an individual importing division in a single location? If yes, skip to question #8.

" "

6. Does the application of the recordkeeper cover multiple divisions? If yes, does each location have its own application form identifying the documents and information to be maintained in each location including name, address, and telephone number of a contact person for each location? If no, describe the deficiency in the comment section and proceed to the next question.

Comments: _____

Yes No

" "

7. Are the recordkeeping systems for the multiple divisions inclusive and capable of providing all the information necessary to support the Customs-related operations of the designated division(s)? If no, describe the deficiency in the comment section and proceed to the next question.
Comments: _____

" "

8. Did the recordkeeper provide a description of the recordkeeping system such as electronic, paper retention, alternate storage methods; and, if applicable, any other information which provides an understanding of operation procedures and associated internal controls? If no, describe the deficiency in the comment section and proceed to the next question.
Comments: _____

" "

9. Did the recordkeeper provide a specific list of (a)(1)(A) records covered by this agreement that will be maintained for each type of entry? If some of the records are to be maintained by an agent, does the list identify which party will maintain each record? If no, describe the deficiency in the comment section and proceed to the next question.
Comments: _____

" "

10. Did the recordkeeper identify the storage location of the accounting and financial records which support, reflect, or relate to importation, exportation, or other Customs activities? If no, describe the deficiency in the comment section and proceed to the next question.
Comments: _____

Yes No

- | | | |
|---|---|--|
| " | " | <p>11. Does the application contain a statement that the recordkeeper has an audit trail linking accounting and financial records to Customs entry submissions? If no, describe the deficiency in the comment section and proceed to the next question.</p> <p>Comments: _____</p> <p>_____</p> <p>_____</p> |
| " | " | <p>12. Does the application describe the storage medium? If no, describe the deficiency in the comment section and proceed to the next question.</p> <p>Comments: _____</p> <p>_____</p> <p>_____</p> |
| " | " | <p>13. Is the storage medium for original records? If yes, skip to question #15.</p> |
| " | " | <p>14. Does the application contain a description of alternative storage procedures? If no, describe the deficiency in the comment section and proceed to the next question.</p> <p>Comments: _____</p> <p>_____</p> <p>_____</p> |
| " | " | <p>15. Does the application explain the retrieval procedures for the records? If no, describe the deficiency in the comment section and proceed to the next question.</p> <p>Comments: _____</p> <p>_____</p> <p>_____</p> |

Yes No

- | | | |
|---|---|---|
| " | " | <p>16. Does the application explain the internal and management controls concerning recordkeeping? If no, describe the deficiency in the comment section and proceed to the next question.</p> <p>Comments: _____</p> <p>_____</p> <p>_____</p> |
| " | " | <p>17. Does the application contain a statement that the recordkeeper understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved? If no, describe the deficiency in the comment section and proceed to the next question.</p> <p>Comments: _____</p> <p>_____</p> <p>_____</p> |
| " | " | <p>18. Does the application contain a statement that the recordkeeper has written procedures in place to explain recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records? If no, describe the deficiency in the comment section and proceed to the next question.</p> <p>Comments: _____</p> <p>_____</p> <p>_____</p> |
| " | " | <p>19. Does the application contain a statement that the recordkeeper has written procedures in place regarding the preparation and maintenance of required records and the production of such records to the Customs Service? If no, describe the deficiency in the comment section and proceed to the next question.</p> <p>Comments: _____</p> <p>_____</p> <p>_____</p> |

Yes No

- " "** 20. Does the application contain a statement that the recordkeeper has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service? If no, describe the deficiency in the comment section and proceed to the next question.
Comments: _____

- " "** 21. Does the application contain a statement that the recordkeeper has written procedures for notifying the Customs Service of occurrences of variances to, and violations of the requirements of the program or negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding the program? If no, describe the deficiency in the comment section and proceed to the next question.
Comments: _____

- " "** 22. Does the application contain a statement that the recordkeeper shall maintain an active bond? If no, describe the deficiency in the comment section and proceed to the next question.
Comments: _____

- " "** 23. Does the application contain a statement that the recordkeeping systems will be maintained in the English language and that the designated individual to individuals, and the records will be located in the United States? If no, describe the deficiency in the comment section and proceed to the next question.
Comments: _____

Yes No

" "

24. Does the application contain a statement that the recordkeeper will advise the Director of the Miami Regulatory Audit field office in writing of significant changes to the recordkeeping system? If no, describe the deficiency in the comment section.

Comments: _____

EVALUATION OF APPLICATION

The Program Administrator will notify the recordkeeper in writing of any deficiencies found during the technical review. The completion of the technical review process will be held in abeyance until the recordkeeper corrects the deficiencies. If the deficiencies are corrected within 90 days, the applicant may request the Director of the Miami Regulatory Audit field office in writing to reinstate the application. Upon correction of the above mentioned deficiencies the Director of the Miami Regulatory Audit field office will certify the recordkeeper's program. If the application does not correct the application deficiencies within 90 days the application will be considered abandoned.

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Appendix C

Certification Agreement

Certification Agreement

The certification agreement for the recordkeeping compliance program will be submitted on company letterhead, contain the following statements, and be signed by an officer of the company.

Agreement:

The (Company name) as a certified participant in the U.S. Customs Service Recordkeeping Compliance Program agrees to the following conditions:

1. That the individual (or individuals) designated to be responsible for recordkeeping compliance under the program is (are) aware of, and understands, the requirements and responsibilities for maintaining and producing Customs records pertaining to Customs activities and normally kept in the ordinary course of business as required by 19 U.S.C. 1508 and 1509.
2. That procedures regarding the preparation and maintenance of required records, and the production of such records to Customs are in place.
3. That procedures are in place to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records.
4. That procedures are in place for notifying the Customs Service of variances to, or violations of, the requirements of the recordkeeping compliance program, and for taking corrective action when notified by the Customs Service of violations or problems regarding the program.
5. That written recordkeeping procedures will be kept current and changes will be timely reported to Customs.
6. That the company agrees to send a biennial statement to Customs certifying that recordkeeping procedures remain in place and that no changes have taken place, or that changes have been reported to Customs.
7. That the company agrees to maintain records in the locations identified as specified in the application and supporting documents, including the recordkeeping system description.
8. That the company agrees to submit a recertification request to Customs if the recordkeeping system has been significantly changed from the original certification.
9. That the company understands when penalties may be assessed, when the certification may be revoked, and the associated appeal process.
10. That the application, supporting documents, and attachments which are incorporated into this agreement, accurately describe the applicant's recordkeeping system.

Signature:_____Title:_____Date:_____

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Appendix D

Recordkeeper's Biennial Statement

Required Information

Recordkeeper's Biennial Statement

Required Information

1. Recordkeeper Information

- a. Name, address, and telephone number
- b. Identification of the recordkeeping system

2. Statements

- a. Statement that a review of the system has been performed¹
- b. Statement that the identified records have not changed since the system description was provided to Customs
- c. Statement that all system changes were reported to Customs
- d. Statement that recordkeeping system and associated internal management controls are in compliance with the requirements of the recordkeeping compliance program

¹ Documentation resulting from the review is to be retained by the recordkeeper and is not to be submitted to Customs.
Appendix D